

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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Tannickell
118653

FILE: B-207261

DATE: June 11, 1982

MATTER OF: AMRAY Inc.

DIGEST:

Protest of award by a Department of Energy prime research contractor is dismissed because protest does not meet any circumstances under which GAO considers subcontractor protests.

AMRAY Inc. protests the award of a contract by KMS Fusion, Inc., to Bausch & Lomb on the grounds that the technical evaluation, which concluded that AMRAY's offered electron microscope was unacceptable, was deficient because it did not allow AMRAY to demonstrate the performance capabilities of its electron microscope. KMS Fusion is an independent prime research contractor for the Department of Energy's Nevada Operations Office under the terms of contract No. DE-AC08-82DP40152. We dismiss the protest because it does not meet any of the limited circumstances under which we will review subcontractor protests.

Our Office will consider subcontractor protests only in limited circumstances: (1) where the prime contractor is acting as purchasing agent of the Government; (2) where the Government's active or direct participation in the selection of the subcontractor has the net effect of rejecting or selecting a potential subcontractor, or significantly limiting subcontract sources; (3) where fraud or bad faith is shown in the Government's approval of the subcontract award or proposed award; (4) where the subcontract is "for" an agency of the Government; or (5) where the questions concerning the award of subcontracts are submitted by Federal officials who are entitled to advance decisions by this Office. Optimum Systems, Incorporated, 54 Comp. Gen. 767 (1975), 75-1 CPD 166.

Upon receipt of AMRAY's protest, we sent AMRAY a copy of the Optimum Systems decision, informed AMRAY that we would only consider subcontract protests under the limited circumstances enumerated therein, and asked AMRAY to comment as to whether its subcontract protest is the type which our Office considers. By letter of May 11, 1982, AMRAY responded that its protest is the type our Office considers but did not give any specific reasons nor point out which exception applies.

The Department of Energy contract with KMS Fusion does not authorize KMS Fusion to act as a purchasing agent for the Government (circumstance 1); the Department of Energy did not actively participate in subcontractor selection (circumstance 2); and the subcontract was not subject to approval by Department of Energy officials (circumstance 3). We do not consider KMS Fusion's subcontract awards to be made "for" the Government (circumstance 4) since we have traditionally considered such awards to include only awards by prime management contractors which operated and managed Atomic Energy Commission (now Department of Energy) facilities and purchases of equipment for Government-owned, contractor-operated plants; in addition, we have considered procurements by cost-type construction management prime contractors to be awards "for" the Government. See Wood Ivy Systems Corporation, B-203487, June 15, 1981, 81-1 CPD 491. KMS Fusion does not fall within any of these categories. Finally, the fifth circumstance is clearly inapplicable because the Department of Energy has recommended that the protest be dismissed under Optimum Systems.

The protest is dismissed.

Harry R. Van Cleave
Harry R. Van Cleave
Acting General Counsel